

FILED

MAR 02 2018

*Clerk, U.S. Courts
District Of Montana
Missoula Division*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

DARREN DEE GOLDSMITH, SR.,

Plaintiff,

vs.

MIKE BATISTA, LARRY PASHA,
SCOTT WEBER, DANNY RIDDLE,
and LEROY KIRKEGARD,

Defendants.

CV 17-60-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations in this case on January 26, 2018, recommending that this action be dismissed for failure to state a claim. Plaintiff Darren Dee Goldsmith (“Goldsmith”) failed to timely object to the findings and recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). The Court will therefore review the record for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

After reviewing the record and finding no clear error, this Court agrees with Judge Johnston that the Complaint, as currently pled, fails to state a federal claim upon which relief may be granted. Goldsmith was given an opportunity to file an amended complaint, but failed to cure the deficiencies.

Accordingly, IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 9) are ADOPTED IN FULL.

- (1) This matter is DISMISSED for failure to state a federal claim.
- (2) The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.
- (3) The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.
- (4) The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Goldsmith failed to state a claim upon which relief may be granted.

DATED this 2nd day of March, 2018.



Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court